

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Shareholders of Tribune Company,	)	MB Docket No. 07-119
Transferors	)	
	)	
and	)	
	)	
Sam Zell, <i>et al.</i>	)	
Transferees	)	
	)	
For Consent to the Transfer of Control of	)	
The Tribune Company	)	
	)	
and	)	
	)	
Applications for the Renewal of License of	)	File Nos. BRCT-20060811ASH, <i>et al.</i>
KTLA(TV), Los Angeles, California, <i>et al.</i>	)	
	)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: January 29, 2014**

**Released: January 30, 2014**

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it petitions for reconsideration of a decision granting the applications to transfer control of Tribune Company and its licensee subsidiaries<sup>1</sup> from its former shareholders to Sam Zell, The Tribune Employee Stock Ownership Plan (“ESOP Plan”) as implemented through the Tribune Employee Stock Ownership Trust (“Tribune Trust”), and EGI-TRB, LLC (“EGI-TRB”).<sup>2</sup> In that decision (“*Tribune I*”), the Commission also granted the broadcast license renewal applications filed by Tribune for four of its stations.<sup>3</sup> A petition for reconsideration was filed jointly by the United Church of Christ, the Media Alliance, and Charles Benton (“UCC/MA”), and a petition was filed by the International Brotherhood of the Teamsters (“Teamsters”). Oppositions were filed by Tribune and the Zell Group. Replies were filed by UCC/MA and by the Teamsters. For the reasons stated below, we grant UCC/MA’s petition for reconsideration with respect to standing, and in all other respects we deny the petitions for reconsideration.

<sup>1</sup> *Shareholders of Tribune Company*, Memorandum Opinion and Order, 22 FCC Rcd 21266 (2007) (“*Tribune I*” or “*MO&O*”). A list of the licenses to be transferred is attached as Exhibit 1.

<sup>2</sup> Zell, the ESOP Plan, the Tribune Trust and EGI-TRB will be collectively referred to as the Zell Group.

<sup>3</sup> Those stations are WPIX(TV), New York, New York; WTIC-TV, Hartford, Connecticut; WCCT-TV, Waterbury, Connecticut; and KTLA(TV), Los Angeles, California.

## II. BACKGROUND

2. In a set of applications filed on May 1, 2007, the Applicants state that the ESOP Plan has been established to provide Tribune employees with an equity interest in the company by investing primarily in Tribune company stock.<sup>4</sup> They go on to state that the ESOP Plan has an effective date of January 1, 2007, and is intended to be a qualified employee benefit plan under Section 401(a) of the Internal Revenue Code and an employee stock ownership plan within the meaning of Section 4975(e)(7) of that code.<sup>5</sup> The stated purpose of the ESOP Plan is to invest in Tribune stock and to hold that stock for the benefit of the Tribune employees participating in the plan.

3. According to the applications, the ESOP Plan is made up of: (1) the plan document, which is included in the applications; (2) the plan committee, which determines the eligibility and entitlement to benefits of Tribune employees under the terms of the plan and which has a fiduciary obligation to act in the interest of employee participants; (3) the Tribune Trust, which holds title to the stock and whose trustee has a fiduciary obligation to hold and vote the stock placed in the ESOP Plan in accordance with the interests of the employee participants; and (4) the participating employees.<sup>6</sup> The applications state that, following the transfer and its associated transactions, Zell will be chairman of the board of Tribune.<sup>7</sup>

4. In connection with the applications, the Transferees requested temporary waivers of the newspaper/broadcast cross-ownership (“NBCO”) Rule to permit, pending the outcome of the *Media Ownership Proceeding*, the common ownership of:

- KTLA(TV), Los Angeles, California, and the *Los Angeles Times* (“*LA Times*”),
- WPIX(TV), New York, New York, and *Newsday*,<sup>8</sup>
- WGN-TV and WGN(AM), Chicago, Illinois, and *The Chicago Tribune*,
- WSFL(TV), Miami, Florida, and the Ft. Lauderdale *South Florida Sun-Sentinel*, and
- WTIC-TV, Hartford, Connecticut, WCCT-TV, Waterbury, Connecticut, and the *Hartford Courant*.<sup>9</sup>

In their petition to deny, UCC/MA opposed the waiver requests.<sup>10</sup> The Media Institute, Gannett, and the Newspaper Association of America supported the waiver request.

5. The Commission denied the requested waivers in all markets except Chicago and required the Transferees to come into compliance with the NBCO Rule, in all markets except Chicago,

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<sup>4</sup> See, e.g., Exhibit 5 to Application for Transfer of Control of WPIX(TV), New York, New York. Exhibit 5 is identical in all of the transfer applications. Exhibit 6, which is also identical in all of the applications, contains the Agreement and Plan of Merger, the Securities Purchase Agreement, the ESOP Purchase Agreement and the documents setting up the ESOP Trust. Copies of all of the applications are part of MB Docket 07-119.

<sup>5</sup> Exhibit 5 at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> The applicants’ original waiver for WPIX(TV) also sought permission for the continued cross-ownership of the Stamford, Connecticut, *Advocate*, and the Greenwich, Connecticut, *Greenwich Times* and WPIX(TV). On November 21, 2007, the applicants filed an amendment stating that they had consummated the sale of the *Advocate* and the *Greenwich Times* to the Hearst Corporation.

<sup>9</sup> The Transferees also sought, and received, a failing station waiver to permit continued ownership of both WTIC-TV and WCCT-TV. 22 FCC Rcd at 21279–81.

<sup>10</sup> Free Press and Findlay Publishing submitted letters stating that they are opposed to the NBCO waivers. The Commission treated those letters as informal objections.

where it granted a permanent waiver.<sup>11</sup> The Commission justified the permanent waiver in part because the “uniquely long-term symbiotic relationship between [Tribune’s] broadcast stations” and the *Chicago Tribune* had created “important sources of quality news and public affairs programming in the Chicago market” that, because of the particular circumstances of that market, might be harmed as a result of forced divestiture.<sup>12</sup> Were this not enough to show that the purpose of the rule — “enhancing diversity in programming service to the public”<sup>13</sup> — would be disserved by divestiture, the Commission also recognized that, given the nature of Chicago’s modern media market (the third largest in the country), “any detriment to diversity caused by common ownership” would be “negligible.”<sup>14</sup>

6. In the *MO&O*, the Commission also ruled that UCC had not demonstrated that it had standing to file a petition to deny against any of the transfer applications other than those for WSFL(TV), Miami, Florida, and WPIX(TV), New York, New York, and that MA had failed to demonstrate that it had standing to file against any of the transfer applications.<sup>15</sup> The basis for this ruling was that the petitioners had failed to submit the required affidavits.<sup>16</sup> Nonetheless, because of the serious policy considerations in this proceeding, the Commission considered the issues raised by the petitioners in its decision.<sup>17</sup>

7. In addition, in the *MO&O* the Commission ruled that the Transferee’s proposed organizational structure complied with the Commission’s rules and that any additional review of that structure to determine whether it could be modified to more fully promote the public interest was both inappropriate under the Communications Act of 1934, as amended,<sup>18</sup> and unwarranted.<sup>19</sup>

8. In their petition for reconsideration, UCC/MA challenge the ruling on standing, stating that it is inconsistent with past Commission practice.<sup>20</sup> In addition, they challenge the decision to grant the permanent waiver of the NBCO Rule in the Chicago market and the actions regarding Tribune’s

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<sup>11</sup> In the case of the other stations, the Commission required Tribune to come into compliance with the NBCO Rule either by selling the non-compliant properties or placing them in a divestiture trust within 6 months of the date of the *MO&O*. In the event that the Transferees challenged the decision in court, the Commission granted a temporary waiver for either two years or until six months after the conclusion of the litigation, whichever would be longer. The Commission also recognized that the NBCO Rule was under review at that time. The Commission stated that if the rule was revised before January 1, 2008, the Transferees would have two years to come into compliance with the rule as revised. If the rule was not revised, the Transferees were bound by the 6-month time limit. In the renewal applications for WPIX(TV), KTLA(TV), WCCT-TV, and WTIC-TV, Tribune had sought waivers of the NBCO Rule for the newspaper/broadcast combinations in those markets. The Commission denied the requested waivers, but granted the renewal applications subject to divestiture conditions which tracked those set out in the context of the transfer applications.

<sup>12</sup> 22 FCC Rcd at 21277–78.

<sup>13</sup> *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 FCC 2d 1046, 1079 (1975) (“1975 Order”), *aff’d sub nom.*, *FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775 (1978)

<sup>14</sup> 22 FCC Rcd at 21277-78.

<sup>15</sup> *Id.* at 21268-69.

<sup>16</sup> *Id.* at 21269.

<sup>17</sup> *Id.*

<sup>18</sup> 47 U.S.C. § 309.

<sup>19</sup> 22 FCC Rcd at 21272-73.

<sup>20</sup> UCC/MA Petition for Recon, MB Docket 07-119, at 5-12 (“UCC/MA Petition for Recon”).

stations in the other markets impacted by the NBCO Rule.<sup>21</sup> Finally, UCC/MA challenge the grant of the renewal of the licenses of KTLA(TV), WTIC-TV, WCCT-TV, and WPIX(TV).<sup>22</sup>

9. The Teamsters seek reconsideration of the finding that the post-transfer governing structure of Tribune complies with Commission rules regarding ownership and control of broadcast stations.

### III. DISCUSSION

#### A. Standing

10. Under the Communications Act of 1934, as amended (the “Act”),<sup>23</sup> only a “party in interest” has standing to file a petition to deny. The petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience, and necessity.<sup>24</sup> The allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit of a person with personal knowledge of the facts alleged.<sup>25</sup> Among the facts to be alleged is that the petitioner is a resident of the station’s service area or a regular viewer of the station.<sup>26</sup> In the *MO&O*, the Commission found that MA and UCC had failed to demonstrate standing in respect to parts of the proceeding.<sup>27</sup> For the reasons explained below, we reverse that finding here.

11. In the *MO&O*, the Commission found that, in the context of the transfer proceeding, MA had not offered the required affidavit and, therefore, had not demonstrated that it had standing. UCC had only offered affidavits from viewers in the New York City and Miami markets. As a result, the Commission found that UCC had standing to challenge the transfer applications only in regard to those markets.<sup>28</sup> The Commission also found that standing to file a petition to deny against one application that forms part of a multi-station transaction does not automatically confer standing to oppose every single application that is part of the transaction, especially when the opposition is based on market-specific waivers, as is the case here.<sup>29</sup> In regard to the renewal applications, the Commission held that, contrary to Tribune’s assertions, UCC, having filed the requisite affidavits, had demonstrated standing to oppose the renewals of WPIX(TV), WCCT-TV, and WTIC-TV.<sup>30</sup>

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<sup>21</sup> *Id.* at 13-20.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> 47 U.S.C. § 309(d); 47 C.F.R. § 73.3584.

<sup>24</sup> 47 U.S.C. § 309(d).

<sup>25</sup> *Id.*

<sup>26</sup> See *In re Curators of Univ. of Missouri*, 16 FCC Rcd 1174, 1175 (2001) (“In order to qualify as a party in interest, petitioners to deny seeking to represent the interests of their members must show that one or more of their members resides within the station’s service area or regularly listens to or views a station and that such listening or viewing is not the result of transient contacts with the station.”). Factual allegations as to why grant of a broadcast application would not serve the public interest, combined with a showing of local residence, “supply the predicate for finding injury in fact.” *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89, 98–99 (1980) (“1980 Policy Statement”).

<sup>27</sup> *Tribune I*, 22 FCC Rcd at 21269.

<sup>28</sup> *Id.* at 21269.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

12. In their petition for reconsideration, UCC/MA argue that the Commission erred in denying UCC standing as a petitioner to deny the transfer applications in the Hartford, Los Angeles, and Chicago markets and in denying MA standing to deny the Los Angeles transfer. They claim that their declarations fulfilled the requirements on Section 309(d)(1) of the Communications Act<sup>31</sup> because they attest that UCC has members in all of the affected markets and that MA has members in Los Angeles.<sup>32</sup> They also assert that the Commission ignored its own findings that UCC and MA had standing to challenge the Tribune renewals in the markets at issue, as well as Commission precedent on standing in other multiple-market transactions.<sup>33</sup> Finally, UCC and MA included with their petition for reconsideration declarations from a UCC member residing in Chicago and an MA member residing in Los Angeles.

13. In his declaration attached to the UCC/MA petition to deny the transfer of control, Jeff Perlstein states that he is the Executive Director of MA, which is located in Oakland, California. He also states that MA has 1900 members throughout California, “a significant number of whom reside in Los Angeles, California,”<sup>34</sup> but he does not claim to reside in the service area of any of the stations at issue, and there are no declarations from any members of MA who reside in the service area of any of the stations. In its petition to deny the renewal of KTLA(TV), Los Angeles, California, MA included the declarations of Jay Levin and David Adelson, both of whom state that they are residents of Los Angeles and regular viewers of KTLA(TV).

14. Attached to the UCC/MA petition to deny the transfer of control are the declarations of the following UCC members: Laurinda Hafner, a resident of Miami, Florida and a regular viewer of WFLA(TV); the Reverend Mark Bigelow, a resident of Centerpoint, New York, and a regular view of WPIX(TV); and the Reverend Mark Lukens, a resident of East Rockaway, New York, and a regular viewer of WPIX(TV). Also attached is the declaration of Robert Chase, Director of Communications of the United Church of Christ, who is based in Cleveland, Ohio. He states that UCC has members in the Los Angeles, Chicago, Ft. Lauderdale-Miami, Hartford, and Long Island/Southern Connecticut areas.<sup>35</sup> Attached to the petition to deny the renewals of WCCT-TV and WTIC-TV are several statements from individuals who state that they reside in the relevant communities and are regular viewers of the stations. UCC also attached declarations from individuals who state that they are residents of the service area of WPIX(TV) and viewers of the station.

15. On reconsideration, we find that UCC had standing to challenge the transfer applications for the Hartford and Chicago markets and that MA had standing to challenge the Los Angeles transfer application. First, UCC and MA were parties to the Hartford and Los Angeles license renewal application proceedings, respectively, having provided affidavits or declarations of members residing in those areas.<sup>36</sup> The Commission consolidated the license renewal and transfer application proceedings.<sup>37</sup> The UCC/MA member declarations regarding the renewal applications concern the same stations, markets, and ownership combinations as those at issue in the transfer proceeding. Therefore, under these particular circumstances, we conclude that the declarations pertaining to the renewal applications were sufficient to establish standing with respect to the transfer application.<sup>38</sup> Second, UCC provided declarations of

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<sup>31</sup> 47 U.S.C. § 309(d).

<sup>32</sup> UCC/MA Petition for Recon at 5-6.

<sup>33</sup> *Id.* at 7-10.

<sup>34</sup> UCC/MA Petition to Deny, MB Docket 07-119, Declaration of Jeff Perlstein.

<sup>35</sup> UCC/MA Petition to Deny, MB Docket 07-119, Declaration of Robert Chase.

<sup>36</sup> *See* UCC/MA Petition for Recon. at 7-8.

<sup>37</sup> 22 FCC Rcd at 21267.

<sup>38</sup> Our decision today only concerns the narrow set of circumstances described above.

members residing in Miami and New York City in support of its petition to deny the transfer applications, and UCC and MA, respectively, provided declarations of members residing in Chicago and Los Angeles with their petition for reconsideration. Although the Commission generally does not allow a petitioner to rely on new facts in a petition for reconsideration, the Commission will consider new facts where the petitioner could not have offered the new facts earlier or where consideration of the new facts is required in the public interest.<sup>39</sup> Here, given conflicting Commission precedent as to whether the declarations filed with its petition to deny were sufficient to establish standing,<sup>40</sup> we conclude that UCC had a good-faith basis for believing that the declarations it filed were sufficient to establish standing and acceptance of the newly filed declarations serves the public interest.<sup>41</sup> As a result, it is not necessary to determine whether the filing of a single member affidavit or declaration would have been sufficient in this case to establish standing with respect to all affected markets.<sup>42</sup>

16. Recognizing that UCC/MA had standing to contest Tribune's waiver requests does not, however, alter any other decisions made in the *MO&O* because the Commission considered and addressed all of UCC/MA's substantive arguments there. The Commission did this by treating UCC/MA as an informal objector to the extent they had not demonstrated standing.<sup>43</sup>

17. In their petition for reconsideration, UCC/MA is joined by Charles Benton, who has not previously participated in the proceeding. We need not address whether he is entitled to participate in the proceeding under 47 C.F.R. § 1.106(b)(1) in light of our conclusion that UCC/MA has standing, because his Declaration submitted in support of the UCC/MA petition does not advance any separate argument.

## **B. The Chicago NBCO Waiver**

18. UCC/MA argues that the Commission's decision to grant a permanent waiver of the NBCO Rule in the Chicago market was arbitrary and capricious. Both Tribune and the Transferees argue

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<sup>39</sup> 47 C.F.R. § 1.106(c).

<sup>40</sup> UCC/MA Petition to Deny at 8-10 (citing *Adelphia Communications Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8215-16 (2006) (declarations of Free Press Policy Director and National Hispanic Media Coalition President that, inter alia, their members resided in areas served by Comcast, Time Warner Cable, and Adelphia established organizations' standing to challenge proposed acquisition of Adelphia by Comcast and Time Warner); *Hispanic Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 18834, 18835 n.4 (2003) (affidavit of National Hispanic Policy Institute (NHPI) President stating that he resided within the service area of one of 65 radio station licenses sought to be transferred was sufficient to demonstrate standing to challenge the entire transaction); *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958, 6965 n.18 (2002) (organizational standing based on affidavit from member in one of multiple markets affected by the transaction)). *But see Certain Broadcast Stations Serving Communities in the State of Louisiana*, 7 FCC Rcd 1503 (1992) (declarations of local chapter members demonstrated NAACP's standing to challenge renewal applications only with regard to stations where chapters were located); *Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd 4893 (1990) (same), *vacated on other grounds*, 1999 WL 511224 (1999).

<sup>41</sup> See, e.g., *Applications of KQED, Inc. for the Renewal of Licenses of Noncommercial Stations KQED-FM, KQED-TV, & KQEC-TV San Francisco, California*, 88 F.C.C.2d 1159, 1166 (1982) (exercising discretion to accept late-filed affidavits necessary to establish standing); *Application of Hubbard Broad., Inc. for Renewal of License of Station KSTP-TV, St. Paul, Minnesota*, 62 F.C.C.2d 970, 971 (1977) ("[S]ince both the original petition for reconsideration and the subject application for review have affidavits attesting to the local residence of the affiants," petitioner who filed a timely informal objection to a renewal application "clearly has standing."); *Prime Cable of Chicago, Inc.*, 77 Rad. Reg. 2d (P&F) 1038, 1041 (CSB 1995) (accepting new evidence that could have been presented earlier as basis for granting reconsideration where new information cured an evidentiary defect).

<sup>42</sup> In future multi-station transfer proceedings in which there are market-specific waivers and the parties seek to challenge such waivers, we believe it would be prudent for parties to provide declarations from viewers and listeners in relevant markets along with their petitions to deny.

<sup>43</sup> 22 FCC Rcd at 21269.



that the decision was fully supported by the record and consistent with the Commission standards for NBCO Rule waivers.<sup>44</sup>

19. At the time the *MO&O* was adopted, Section 73.3555(d)(3) of the Commission's rules (the "Rules") provided that "no license for [a] . . . TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls a daily newspaper and the grant of such license will result in . . ." the Grade A contour of that television station encompassing the entire community in which such newspaper is published.<sup>45</sup> When the rule was adopted, most existing newspaper/broadcast combinations were grandfathered and such grandfathered combinations were allowed to continue until the stations at issue were transferred to new owners. In addition, a licensee was permitted to acquire a non-compliant newspaper in a market where it owned a broadcast station, without requesting a waiver, as long as it came into compliance with the rule prior to the end of the station's license term.<sup>46</sup> In addition to these two exceptions to the NBCO Rule, the Commission contemplated the need for waivers to permit new cross-ownership patterns in situations where application of the rule would be unduly harsh.<sup>47</sup> Waivers were devised to accommodate four situations: (1) where there is an inability to dispose of an interest in order to conform to the rules; (2) where the only sale possible is at an artificially reduced price; (3) where separate ownership of the newspaper and the broadcast station cannot be supported in the locality; and (4) where, for whatever reason, the purpose of the rule would be disserved by divestiture.<sup>48</sup> The Applicants made their waiver requests, both in the renewal proceedings and the transfer proceedings, under the fourth prong of the test.

20. In *Tribune I*, the Commission granted a permanent waiver of the NBCO Rule to Tribune's Chicago licensee (WGN-TV) because the "uniquely long-term symbiotic relationship between [Tribune's] broadcast stations" and the *Chicago Tribune* has created "important sources of quality news and public affairs programming in the Chicago market" that, because of the particular circumstances of that market, might flag with forced divestiture.<sup>49</sup> The Commission found that the purpose of the rule — "enhancing diversity in programming service to the public"<sup>50</sup> — would be disserved by divestiture. The Commission also found that, given the nature of Chicago's modern media market (the third largest in the country), "any detriment to diversity caused by common ownership" would be "negligible."<sup>51</sup>

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<sup>44</sup> We find the UCC/MA Petition for Reconsideration to be deficient under Section 1.106(d)(1) of the Commission's rules with respect to "the grant of indefinite 'temporary' waivers of the NBCO Rule" as to Tribune properties in markets other than Chicago. UCC/MA Petition for Recon. at 2. UCC/MA maintain that the Commission did not address their arguments concerning this issue, yet the Commission denied the requests for the very reasons advocated by UCC/MA, see 22 FCC Rcd at 21275–76, paras. 29–30, and UCC/MA do not explain why they maintain that that decision was erroneous. See 47 C.F.R. § 1.106(d)(1) (stating that a petition for reconsideration "shall state with particularity the respects in which petitioner believes the action taken by the Commission . . . should be changed . . . and shall state specifically the form or relief sought . . ."); *Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Service*, 10 FCC Rcd 12427, 12438 (1995) (reconsideration petition insufficient under Section 1.106(d)(1) where petitioner did not request any changes in underlying Commission action or cite findings of fact or conclusions of law which it believed to be erroneous).

<sup>45</sup> 47 C.F.R. § 73.3555(d)(3).

<sup>46</sup> 1975 Order, 50 FCC 2d at 1076 n. 25.

<sup>47</sup> 1975 Order, 50 FCC 2d at 1077.

<sup>48</sup> 1975 Order, 50 FCC 2d at 1084–85; *Washington Star Communications, Inc.*, Memorandum Opinion and Order, 54 FCC 2d 669 (1975); *Metromedia Radio and Television, Inc.*, Memorandum Opinion and Order, 102 FCC 2d 1334 (1985), *aff'd*, *Health & Med. Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1987) (applying standard in new, not previously grandfathered combination).

<sup>49</sup> 22 FCC Rcd at 21277–78.

<sup>50</sup> 1975 Order, 50 FCC 2d at para. 110.

<sup>51</sup> 22 FCC Rcd at 21277–78.

21. UCC/MA errs in suggesting that the only considerations by the Commission in granting the Chicago permanent waiver were the length of the combination and the lack of an NBCO Rule when Tribune first acquired its properties in Chicago.<sup>52</sup> Although the long history and duration of the combination surely informed the analysis, the thrust of the Commission's analysis concerns the result of that particular relationship: a uniquely integrated and symbiotic relationship that fosters the creation of quality news and public affairs broadcasting to the demonstrated benefit of the public in the Chicago market.<sup>53</sup> Contrary to UCC/MA's interpretation, the Commission did not hold that the Chicago combination's grandfathered status was enough by itself to justify a permanent waiver, but instead contrasted the situation in Chicago with the lack of equities supporting a permanent waiver for Tribune's other properties. As the *MO&O* said, "Tribune knew at the time it created the combinations in other markets [aside from Chicago] that they did not comply with the Commission's rules."<sup>54</sup> Further, the Commission emphasized that the size of the Chicago market and its similarity to other markets in which the Commission previously approved permanent waivers — indeed, the Commission previously granted a permanent waiver for a newspaper-broadcast combination in Chicago — persuaded it that any harm to diversity caused by the common ownership is insignificant.<sup>55</sup>

22. UCC/MA suggests that it was error to "grant an unsolicited permanent waiver,"<sup>56</sup> but it points to no rule or precedent that would forbid the granting of such a waiver. More to the point, the Commission did not expect that the primary premises of the analysis — the "quality news and public affairs programming" arising from the long-standing and symbiotic combination of WGN(AM), WGN-TV, and the *Chicago Tribune* and the diverse sources of news in the unique circumstances of the Chicago market — would disappear after two, five, or ten years. Having found that the Chicago combination served the public interest, the Commission had no reason to establish an expiration date for the waiver.

23. UCC/MA's last contention is that Tribune has not met the "considerably heavier" burden set by our precedent for justifying a permanent waiver of the NBCO Rule,<sup>57</sup> suggesting that this burden can only be met when the prior owner of a newspaper or broadcast property seeks to reacquire that property because it has fallen into financial distress and that "market size [is] barely relevant, if at all."<sup>58</sup> This narrow reading of precedent is unfounded. The Commission has never set out bright-line rules for applying the fourth exception to the NBCO Rule since the point of a catch-all exception is to deal with unforeseen circumstances without arbitrary strictures. Moreover, the Commission has consistently looked

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<sup>52</sup> See UCC/MA Petition for Recon. at 17–18.

<sup>53</sup> See, e.g., WGN-TV Application, at Exhibit 18, pp. 30–33. According to Tribune, during the time period of Tribune's common ownership of the properties WGN-TV has expanded its broadcast to 31.5 hours per week of regularly scheduled news programming, more than any other television station in the DMA. WGN-TV and WGN(AM) are able to cover the wars in Iraq and Afghanistan, and give their stories a local perspective, through their access to *Chicago Tribune* reporters assigned to those conflicts, including live interviews with reporters on the ground. In addition, Tribune stated that the print and broadcast properties combined their efforts to cover political news, including the 2002 Illinois gubernatorial debate and coverage of party conventions.

<sup>54</sup> 22 FCC Rcd at 21278. Because the Commission did not rely on the abstract grounds claimed by UCC/MA but instead on the narrow circumstances of the transaction before it, UCC/MA's suggestion that the Commission's "logic here would apply to the sale of every grandfathered cross-ownership," Petition for Recon. at 15, is simply wrong.

<sup>55</sup> 22 FCC Rcd at 21278.

<sup>56</sup> UCC/MA Petition for Recon. at 14.

<sup>57</sup> UCC/MA Petition for Recon. at 17 (quoting *Applications of Capital Cities/ABC, Inc. and the Walt Disney Company*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5887 (1996)); see also UCC/MA Petition for Recon. at 19 n.19 (quoting *Application of Hopkins Hall Broadcasting, Inc. and Shelbyville Publishing Co., Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 9764, 9766 (1995)).

<sup>58</sup> UCC/MA Petition for Recon. at 19.



to the size and diversity of the market at issue in considering whether the purposes of the NBCO rule would be served by its application in each case.<sup>59</sup> Given the “uniquely long-term symbiotic relationship between [Tribune’s] broadcast stations” and the *Chicago Tribune* that provides a special benefit of continued cross-ownership, coupled with the slight cost to diversity in Chicago’s massive media market of continued cross-ownership, Tribune has in fact shown sufficiently “unique or special circumstances”<sup>60</sup> to justify the granting of a permanent waiver of the NBCO Rule to its Chicago licensees. Based on the record, we find that the decision to grant a permanent waiver of the NBCO Rule was justified and affirm the Commission’s decision on this issue.

### C. The License Renewals

24. As noted above, UCC/MA state that they seek reconsideration of the “unexplained” decision to grant the renewal of licenses of stations KTLA(TV), WTIC-TV, WCCT-TV, and WPIX(TV). Their only argument in support of this statement is one sentence that says the Commission did not address or justify why renewal should be granted to those licenses.<sup>61</sup> This is incorrect. In the *MO&O*, the Commission stated that the only issue remaining in the renewal proceedings was the requested NBCO waivers and that the arguments raised in the transfer proceeding and the renewal proceedings were essentially the same.<sup>62</sup> Therefore, in the interest of administrative efficiency, it consolidated its analysis of those arguments.<sup>63</sup> In addition, the Commission addressed, and rejected, petitioners’ arguments that the renewal applications had been defective on their face.<sup>64</sup> In light of the fact that the Commission did address the outstanding issues in the renewal proceedings, it cannot be said the decision to grant the renewals was “unexplained.” We, therefore, affirm the decision to grant the renewals.

### D. The Teamsters

25. In the comments they filed in the original transfer proceeding, the Teamsters did not ask that the Commission deny the application and did not allege that the proposed structure of Tribune following the transfer of control would violate any Commission rule or policy. Instead, they asked that the Commission “take a close look at the proposed ownership structure of the transferee” to determine whether the Commission’s diversity and localism concerns had been adequately addressed and minimized. The Commission’s decision quoted Section 310(d) of the Act, which states that, when acting on an application for assignment or transfer of a license:

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<sup>59</sup> See *Application of Hopkins Hall Broadcasting*, 10 FCC Rcd at 9766 (stating that “[i]n analyzing the impact of a waiver [of the NBCO Rule] on competition and diversity, it is necessary to first determine the relevant market,” declining to grant a waiver when doing so would eliminate one of only three independent voices in small community, and contrasting the local market of 32,000 people to the “major market[s]” of Chicago and New York); see also, e.g., *Fox Television Stations, Inc.*, Declaratory Ruling, 8 FCC Rcd 5341, 5351 (1993) (granting a permanent waiver for a New York licensee, and “focus[ing] upon those media voices available in the city of New York which are responsive to the local problems and needs of the residents there”); *Applications of Capital Cities/ABC, Inc.*, 11 FCC Rcd at 5890–91, 5892–93 (The Commission declined to grant the waivers without a more detailed analysis of competition and diversity within the relevant markets. The applicants had only submitted analysis’ based on DMA and not communities of license.).

<sup>60</sup> *Applications of Capital Cities/ABC, Inc.*, 11 FCC Rcd at 5888 (1996).

<sup>61</sup> UCC/MA Petition for Recon. at 2.

<sup>62</sup> 22 FCC Rcd at 21267.

<sup>63</sup> *Id.*

<sup>64</sup> 22 FCC Rcd at 21283–84.

[T]he Commission may not consider whether the public interest, convenience and necessity may be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.<sup>65</sup>

The Commission explained that this provision confines its review of a transfer of control application to consideration of only the qualifications of the proposed transferee and does not permit it to consider whether a different transferee might better serve the public interest. It also explained that the Commission regularly reviews the organizational and governing structure of an applicant, but that in conducting those types of reviews, the question is whether the organizational structure of a proposed licensee complies with our rules and policies, not whether it hypothetically could be changed to better serve the public interest. If an applicant's structure results in a violation of the rules, the structure must be revised or the application will be denied. If an applicant's structure fully complies with the rules, there is no basis on which to order its revision. The *MO&O* stated that to engage in the type of review urged by the Teamsters would involve the Commission in endless speculation as to whether the organizational structure of each individual applicant could somehow be improved to generate an additional public interest benefit. Because no party had alleged that the Transferees' proposed organizational and governing structure violates any Commission rule or policy or any other statute, rule, or policy, the Commission declined to conduct the kind of review sought by the Teamsters and did not order any changes to the organizational or governing structure of the ESOP Plan or the Tribune Trust as a condition of granting the transfer applications.

26. In its petition for reconsideration, the Teamsters argued that the party controlling Tribune, Zell, would not own Tribune. They further argued that the beneficiaries of the ESOP Plan, who Teamsters contend are the rightful owners of Tribune, would have no role in the selection of Tribune's directors and would have no opportunity to select the Tribune ESOP Plan trustee. The Teamsters argued that this arrangement violated Section 310(d) of the Communications Act of 1934, as amended,<sup>66</sup> because it separated beneficial ownership of Tribune from day-to-day control over station personnel, programming, and finances. Teamsters concede that the Commission may lawfully vest control of a broadcast licensee in a trust and that "ownership and control of a licensee may, consistent with Section 310(d), be divided between a trustee who has legal ownership and beneficiaries who have beneficial ownership."<sup>67</sup>

27. In their opposition, the Transferees argued that the Teamsters misstated the degree of separation between ownership and control of Tribune.<sup>68</sup> They state that the ESOP, which was organized as a trust under Illinois law, at all times held a controlling interest in Tribune and had the right to elect a majority of the company's board of directors, giving it control of the company.<sup>69</sup> Furthermore, they stated that the employee-beneficiaries of the ESOP plan held pass-through voting rights with respect to allocated shares on specified major matters affecting Tribune, such as any sale of all or substantially all of Tribune's assets, on future mergers, and on recapitalizations.<sup>70</sup> The Transferees also stated that the trustee of the ESOP Plan was a fiduciary required under federal pension law to vote the stock solely for the benefit of the employee participants. They contended that the trustee owed its fiduciary duty solely to the employee participants and not to Tribune's management or its board of directors.<sup>71</sup>

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<sup>65</sup> 47 U.S.C. § 310(d).

<sup>66</sup> *Id.*

<sup>67</sup> Teamsters Reply to Opposition at 2.

<sup>68</sup> Tribune Opposition to Teamster's Petition for Recon. at 4.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

28. We find the Teamsters' arguments to be without merit. Our Rules specifically permit trusts designed to separate control of a licensee from beneficial ownership to serve as Commission licensees.<sup>72</sup> The Teamsters' claim that Section 310(d) precludes a trustee from exercising control while the beneficiaries of the trust receive only economic benefits is inconsistent with our Rules and with precedent.<sup>73</sup> In some proceedings, the Commission even has required ownership interests to be placed in trusts when our Rules preclude the beneficial owner from exercising control over the licensee.<sup>74</sup> Here, the transfer of control was to a trust, which delegated day-to-day operations of the licensee to another attributable party, who was answerable to the trust and to its trustee, who in turn had a fiduciary obligation to the beneficiaries. In addition, we note that here the trust beneficiaries exercised a degree of control over the licensees because of their pass through voting rights on certain major company decisions. In addition, the Commission passed on the qualifications of Zell, the ESOP Plan, the Tribune Trust and EGI-TRB and authorized Zell to exercise control along with the other transferees.<sup>75</sup> Nothing in this arrangement as presented in the record is in violation of our Rules and policies. Therefore, we affirm the previous finding that the post-transfer organization of Tribune complied with our Rules and policies.

#### IV. ORDERING CLAUSES

29. ACCORDINGLY, IT IS ORDERED, the petition for reconsideration filed by the United Church of Christ and the Media Alliance in MB Docket No. 07-119 IS GRANTED TO THE EXTENT SET FORTH ABOVE AND OTHERWISE DENIED, and the petition for reconsideration filed by the International Brotherhood of the Teamsters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>72</sup> See 47 C.F.R. § 73.3555, Note 2(d) (2006). See also *Applications of Arthur McBride, Jr.*, Memorandum Opinion and Order, 14 FCC Rcd 13551 (Med Bur. 1999).

<sup>73</sup> The cases cited by the Teamsters are not relevant. The first, *Alabama Educational Television Commission Decision*, 50 FCC 2d 461 (1975), does not deal with a licensee's organizational structure. The second, *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981), holds that a licensee *may* delegate day-to-day control over many matters to an unaffiliated third-party, as long as it does not relinquish all control without Commission consent. Here, the Commission expressly granted its consent to the transfer of control to Zell and the other parties identified in the applications.

<sup>74</sup> *Applications of Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062, 16072 (2000).

<sup>75</sup> *Tribune I*, 22 FCC Rcd at 21284.

## Exhibit 1

File Number	Call Sign	ID	Community
BTCCT-20070501AEY	WPIX	73881	New York, NY
BTCCT-20070501AEZ	WTXX	14959	Waterbury, CT
BTCCT-20070501AFC	KDAF	22201	Dallas, TX
BTCCT-20070501AFD	WTIC	146	Hartford, CT
BTCCT-20070501AFE	WPMT	10213	York, PA
BTCCT-20070501AFF	WPHL	73879	Philadelphia, PA
BTCCT-20070501AFG	WXIN	147	Indianapolis, IN
BTCCT-20070501AFJ	KWGN	35883	Denver, CO
BTCCT-20070501AFK	KTLA	35670	Los Angeles, CA
BTCCT-20070501AFL	KRCW	10192	Salem, OR
BTCCT-20070501AFM	WTTV	56523	Bloomington, IN
BTCCT-20070501AFN	WTTK	56526	Kokomo, IN
BTCCT-20070501AFR	KTXL	10205	Sacramento, CA
BTCCT-20070501AFS	KMYQ	69571	Seattle, WA
BTCCT-20070501AFT	WXMI	68433	Grand Rapids, MI
BTCCT-20070501AFZ	KPLR	35417	St. Louis, MO
BTCCT-20070501AGB	WSFL	10203	Miami, FL
BTCCT-20070501AGC	KHCW	23394	Houston, TX
BTCCT-20070501AGE	WGN	72115	Chicago, IL
BTCCT-20070501AGG	KCPQ	33894	Tacoma, WA
BTCCT-20070501AGL	KSWB	58827	San Diego, CA
BTCCT-20070501AGM	WDCW	30576	Washington, DC
BTCCT-20070501AGO	WGNO	72119	New Orleans, LA
BTCCT-20070501AGP	WNOL	54280	New Orleans, LA
BTCCT-20070501AFO	K20ES	12671	Pendleton, OR
BTCCT-20070501AFP	K24DX	12678	Pendleton, OR
BTCCT-20070501AFQ	KRCW-LP	35151	Portland, OR
BTCCT-20070501AFU	K25CH	69575	Centralia, WA
BTCCT-20070501AFV	K29ED	69574	Everett, WA
BTCCT-20070501AFW	W42CB	64440	Hesperia, MI
BTCCT-20070501AFX	W52DB	64442	Muskegon, MI
BTCCT-20070501AGH	K25CG	33898	Aberdeen, WA
BTCCT-20070501AGI	K42CM	33895	Centralia, WA
BTCCT-20070501AGJ	K54DX	33896	Ellensburg-Kittitas, WA
BTCCT-20070501AGK	K64ES	33899	Chelan, WA
BTCCT-20070501AGN	W51CY	64680	Chambersburg, PA
BTC-20070501AGF	WGN(AM)	72114	Chicago, IL